

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Hearing Date: February 10, 2011
Hearing Time: 11:00 am

In Re:

PARS SINGH
SUNITA DESWAL

Debtors.

**NOTICE OF MOTION FOR
TERMINATION OF AUTOMATIC
STAY**

Case No.: 09-40849-cec
(Chapter 13)

Assigned to:
Hon. CARLA E. CRAIG
Bankruptcy Judge

Please take notice that Bank of America National Association as successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX with Saxon Mortgages Services, Inc. as servicer, a secured creditor of Debtor, by the undersigned attorneys, will move this Court on the 10th day of February, 2011, at 11:00 am or as soon thereafter as counsel can be heard, at the United States Bankruptcy Court, 271 Cadman Plaza East, Courtroom # 3529, Brooklyn, NY 11201 for an Order pursuant to 11 U.S.C. §362(d)(1) and 11 U.S.C §1322(b)(5) terminating the automatic stay as to movant's interest in real property commonly known as 236-11 Bentley Road, Rosedale, NY 11422 and for such other relief as the Court may deem proper.

PURSUANT TO LOCAL BANKRUPTCY RULE 9006-1(a), ANY ANSWERING PAPERS ARE TO BE SERVED SO AS TO BE RECEIVED BY THE SECURED CREDITOR'S COUNSEL NO LATER THAN 7 DAYS BEFORE THE HEARING DATE.

DATED: January 4, 2011
Buffalo, New York

Yours, etc.

By:



Ehret A. Van Horn, Esq.

STEVEN J. BAUM, P.C.

Attorneys for Secured Creditor

Bank of America National Association as
successor by merger to LaSalle Bank National

Association, as Trustee for Morgan Stanley

Mortgage Loan Trust 2006-16AX with

Saxon Mortgages Services, Inc. as Servicer

Office and Post Address:

220 Northpointe Parkway, Suite G

Amherst, NY 14228

Telephone 716-204-2400

TO:

PARS SINGH
23611 Bentley Road
Rosedale, NY 11422-3272

Debtors

SUNITA DESWAL
23611 Bentley Road
Rosedale, NY 11422-3272

KARAMVIR DAHIYA, ESQ.
Dahiya Law Offices, LLC
350 Broadway Suite 412
New York, NY 10013

Attorney for Debtors

MICHAEL J. MACCO, ESQ.
135 Pinelawn Road
Suite 120 South
Melville, NY 11747

Chapter 13 Trustee

UNITED STATES TRUSTEE
271 Cadman Plaza East
Suite 4529
Brooklyn, NY 11201

U.S. Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In Re:

PARS SINGH
SUNITA DESWAL

Debtors.

APPLICATION

Case No.: 09-40849-cec
(Chapter 13)

Assigned to:
Hon. CARLA E. CRAIG
Bankruptcy Judge

Bank of America National Association as successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX with Saxon Mortgages Services, Inc. as servicer ("Secured Creditor"), by its attorneys Steven J. Baum, P.C., moves to terminate the automatic stay in this case with respect to the real property commonly known as 236-11 Bentley Road, Rosedale, NY 11422 and states as follows:

1. Secured Creditor is the holder of a mortgage dated the 5th day of April, 2006 in the amount of \$540,000.00 secured by the premises commonly known as 236-11 Bentley Road, Rosedale, NY 11422 (the "Mortgaged Premises"). A copy of the Note, Mortgage, and Assignment is attached hereto as **Exhibit 'A'**.

2. On the 5th day of February, 2009 Debtors Pars Singh, Sunita Deswal filed a Petition under Chapter 13 of Title 11 U.S.C. §101 et seq with this Court, and an Order for relief was duly entered.

3. The Note and Mortgage provide that the Debtors will be in default if they do not make full monthly payments on each due date. As of the 31st day of December, 2010, the Debtors are due for 2 post-petition payments in the amount of \$4,027.09 which represents the payments due the 1st day of November, 2010 through December, 2010 and has not cured said default. In addition, 2 payments due on the 1st day of January, 2011 through February, 2011 will be due at the date this motion is heard. A Motion for Relief from Stay Worksheet is attached hereto as **Exhibit 'B'**.

4. Through the 21st day of January 2011, the total amount owing the Secured Creditor is \$550,026.42. Interest on the unpaid principal balance will continue to accrue, and to protect its security in the Mortgaged Premises Secured Creditor may be required to make further advances for property taxes, insurance and related matters.

5. Based on the Schedule A & D attached hereto as **Exhibit 'C'**, said real property is valued at \$440,000.00. Based on the Secured Creditor's lien amount and the value of the Mortgaged Premises, there exists no equity in the premises.

6. Section 362(d)(1) of the Bankruptcy Code provides in pertinent part that the Court shall grant relief from the stay imposed by Section 362(a) "for cause, including lack of adequate protection of an interest in property..." As set forth above, "cause" exists to vacate the automatic stay as the Debtor has failed to make monthly post-petition mortgage payments to Secured Creditor. Under Section 362(d)(1), failure to make post-petition mortgage payments constitutes "cause" to modify the automatic stay. See, In re Taylor, 151 B.R. 646 (E.D.N.Y.1993); In re Davis, 64 B.R. 358, 359 (Bankr. S.D.N.Y. 1986); In re Frascatore, 33 B.R. 687 (B. Ct. E.D. Pa. 1983).

7. A copy of a proposed Order granting the relief sought by Secured Creditor is annexed hereto as **Exhibit 'D'**.

8. No prior application has been made for the relief requested herein.

WHEREFORE, Secured Creditor respectfully requests that an Order be granted terminating the automatic stay immediately as to Secured Creditor's interest in the Mortgaged Premises together with such other, further and different relief as the Court may deem just in this matter.

DATED: January 4, 2011
Buffalo, New York

Yours, etc.

By:



Ehret A. Van Horn, Esq.

STEVEN J. BAUM, P.C.

Attorneys for Secured Creditor

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